IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 3 OF 2006

SHRI LORGIO ANDRE RODRIGUES(SIN.DEC.) THROUGH L.RS., ...Petitioners

Versus

MST.EVA GOMES E. CORREIA AND 4 ORS., ...Respondents

Mr. V. A. Lawande,Advocate for the Petitioners.
Mr. G. Shirodkar, Advocate for R.1 to 3.
Ms. L.Dharwadkar,aga For R-4 & 5.

Coram:- A. P. LAVANDE, J.

Date:- 20th April, 2006

P.C.:

This Civil Revision Application is directed against the Order dated 11th October, 2005 passed in Misc. Civil Appeal No. 4/2004 by which the appeal filed by the respondents was allowed. It has been brought to my notice by Mr. Lawande, learned counsel appearing for the Petitioners that in the impugned order the respondent No. 1 is Lorgio Andre Rodrigues who had already expired during the pendency of the suit and his legal representatives were already brought on record in the trial Court.

2. Mr. Shirodkar, learned counsel appearing for the respondents No.1, 2 and 3 submits that an application to substitute the deceased respondent No.1 by his legal representatives was already filed before the appellate Court and the appellate Court without deciding the said application, passed the impugned Order and that is why the names of the legal representatives of the respondent No.1 are not shown in the cause title. This position has not been disputed by Mr. Lawande, learned counsel for the petitioners. That being the position, the impugned order is liable to be set aside on the ground that the impugned order has been passed against

the respondent No.1 who was already dead without bringing his L.Rs. on record. The impugned order, therefore, deserves to be quashed and set aside.

3. In the result, therefore, the impugned Order dated 11th October, 2005 passed in Misc. Civil Appeal No.4/04 by the Adhoc Addl. District Judge, Fast Track Court-II, South Goa, Margao is quashed and set aside and the lower appellate Court is directed to decide the application filed by the respondents to substitute the deceased respondent No.1 by his legal representatives and only thereafter decide the Misc. Civil Appeal No.4/04. Since the respondents No.1, 2 and 3 have not been diligent before the lower appellate court, it is considered necessary to award costs against the respondents No.1, 2 and 3. Respondents No.1, 2 and 3 shall deposit the costs of Rs.5000/- in the lower appellate court within a period of four weeks from today. Liberty to the petitioners herein to withdraw the costs after deposit. In case the Respondents No.1, 2 and 3 fail to deposit the costs, Misc. Civil Appeal No.4/04 shall stand dismissed.

The Revision Application stands disposed of in the aforesaid terms.

A. P. LAVANDE, J.

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